



Paper No. 7

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|                                 |   |                        |
|---------------------------------|---|------------------------|
| In re Application of            | : |                        |
| Kenneth A. Pieroni              | : | DECISION ON PETITION   |
| Application No. 09/939,405      | : | TO WITHDRAW THE        |
| Filing Date: August 27, 2001    | : | HOLDING OF ABANDONMENT |
| Attorney's Docket No. CHMP-101D | : |                        |

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181 filed on February 24, 2003. There is no fee for this petition.

The petition is **GRANTED**.

A review of the application file reveals that a Notice of Abandonment was mailed on February 6, 2003 holding the application to be abandoned for failure to timely file a proper response to the Office letter (i.e., a restriction requirement) mailed on April 8, 2002.

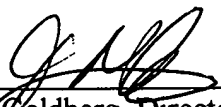
Petitioner asserts that "on April 19, 2002, he held a telephone conversation with Examiner Garber during which an election was made (in response to a requirement for restriction) to continue the examination herein of Set II (i.e. Claims 19-28)." The evidence provided by the petitioner includes a copy of the telephone log from his office which shows a 1.5 minute telephone call to the examiner's phone number on April 19, 2003. Further evidence provided by the petitioner includes a copy of the front of the file jacket maintained by the petitioner for the above-noted application. The copy of the front of the file jacket includes a notation indicating a telephone election was made on April 19, 2003.

Although, as provided in 37 C.F.R. § 1.2, all business with the Patent and Trademark Office should be transacted in writing, the evidence provided by the petitioner is found to be convincing that an oral election was made.

Accordingly, the Notice of Abandonment mailed February 6, 2003 is **VACATED**.

The application is being forwarded to the Technical Center 2800 support staff for entry of the petition as a written election in response to the restriction requirement. The application will then be forwarded to the examiner for continued examination on the elected claims 19-28.

Any inquiries concerning this decision should be directed to Edward Westin at (703) 308-4823.



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